
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RALPH MERRILL,

Appellant,

vs.

VECTOR ARMS, CORP.,

Appellee.

**ORDER AFFIRMING REPORT &
RECOMMENDATION**

Case No. 2:15-CV-896-DAK

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate Judge Dustin B. Pead under 28 U.S.C. § 636(b)(1)(B). Appellant Ralph Merrill filed a Notice of Appeal from Bankruptcy Court on December 22, 2015. On February 21, 2016, Appellee Vector Arms, Corp. filed a Motion to Dismiss Case as Frivolous and a Motion for Attorney Fees. On March 3, 2016, Mr. Merrill also filed a Motion to Dismiss the case but argued that Vector Arms was not entitled to attorney fees. On July 15, 2016, Magistrate Judge Pead issued a Report and Recommendation recommending that the court dismiss the appeal with prejudice, that the court award the costs of the appeal to Vector Arms, and that the court deny the request for double costs and attorney fees to Vector Arms.

A Magistrate Judge's Report and Recommendation is subject to *de novo* review by this court. *See* 28 U.S.C. § 636(b)(1)(B); *see also* Fed. R. Civ. P. 72(b). The Report and Recommendation notified Plaintiff that any objection to the Report and Recommendation was required to be filed within fourteen days of receiving it. On August 1, 2016, Mr. Merrill filed a document that this court construes as an objection to the Report and Recommendation even though it is entitled "Response and Supplemental Memorandum." In his objection, Mr. Merrill requests that the court reconsider or postpone the proposed award of costs because he had good

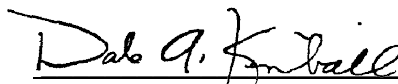
cause to bring the appeal. Magistrate Judge Pead agrees with Mr. Merrill that his “notice of appeal does not appear frivolous on its face.” R. & R. at 3, July 15, 2016, ECF No. 17.

Magistrate Judge Pead’s award of costs to Vector Arms is based on Federal Rule of Bankruptcy Procedure 8021 and not on whether good cause existed to bring the appeal. Rule 8021 provides that, if a bankruptcy appeal to a district court is dismissed, “costs are taxed against the appellant, unless the parties agree otherwise.” Fed. R. Bankr. P. 8021(a)(1). Because the parties did not agree otherwise in this case, the award of costs against Mr. Merrill is appropriate.

The court has reviewed Magistrate Judge Pead’s Report and Recommendation *de novo*. The court affirms and adopts the Magistrate Judge's Report and Recommendation in its entirety. Accordingly, the Motion to Dismiss Case as Frivolous and Motion for Attorney Fees filed by Vector Arms is DENIED in part and GRANTED in part. The motion is denied in all respects except that the court grants the request for costs expended on appeal. Mr. Merrill’s Motion to Dismiss is GRANTED.

DATED this 17th day of August, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL

United States District Judge